



PUBLIC RELEASE MEMORANDUM

Date: December 18, 2023

Subject: **Fatal Officer-Involved Incident**

Involved Peace Officers: Deputy Arootin Bandari
San Bernardino County Sheriff's Department

Involved Subject: Jakob Osuna (DOB 11/05/2001)
Subject's Residence: Victorville, CA

Incident Date: September 28, 2020

Case Agent: Sergeant Scott Abernathy
Detective Vanayes Quezada
San Bernardino County Sheriff's Department

Agency Report #: 172008867/H#2020-107

DA STAR #: 2022-24470

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PREAMBLE

The summary of this fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The original case agent for this submission was SBCSD Detective Scott Abernathy, who was subsequently promoted to the rank of Sergeant. This case was thereafter reassigned to Detective Vanayes Quezada for handling.

The submission reviewed included the following: reports of law enforcement witnesses, law enforcement dispatch audio recordings, audio recordings of law enforcement interviews, audio recordings of civilian witness interviews, civilian and law enforcement video recordings, law enforcement photographs, a three-dimensional digital rendering of the scene and law enforcement scientific investigation reports.

FACTUAL SUMMARY¹

On September 28, 2020, at approximately 11:23, on the 12000 block of Stage Coach Drive in the city of Victorville, SBCSD Deputy Arootin Bandari shot at and struck Jakob Osuna. Mr. Osuna sustained multiple gunshot wounds and died as a result. At the time he was shot, Mr. Osuna was armed with a loaded semi-automatic pistol. Deputy Arootin sustained a gunshot wound to the hand during the incident that appeared to have been self-inflicted. No other persons were reported to be injured.

On the night of the incident, Deputy Bandari was riding in the front passenger seat of a marked SBCSD patrol unit being driven by his trainee—Deputy Roberto Morales. The deputies were on duty and assigned to patrol Victorville. While moving eastbound on Luna Road, a silver Honda Accord moving southbound on a cross-street failed to stop at a stop sign and almost careened into the side of the patrol unit. Deputy Morales was able to avoid the collision while the driver of the Accord—Jakob Osuna, turned into the westbound lane of traffic and sped away. Deputy Morales immediately activated his overhead emergency lights and wail siren and pursued Mr. Osuna to initiate a traffic stop. As the pursuit began, Deputy Bandari advised his trainee to focus on his driving and that Deputy Bandari would make all the necessary radio announcements. Deputy Bandari delayed alerting dispatch of Mr. Osuna's failure to yield to the traffic stop, initially, in the event that Mr. Osuna would pull over. However, the deputies watched Mr. Osuna run a second stop sign and speed into a residential neighborhood—indicating to them that Mr. Osuna did not intend to yield. Deputy Bandari alerted dispatch that he and Deputy Morales were engaged in a traffic pursuit at approximately 11:18 p.m.

Mr. Osuna's driver's window was down for the duration of the pursuit, such that Deputy Morales was able to see with the use of his unit spotlight that Mr. Osuna was a Hispanic male adult. The

¹ The factual conclusions included here are based upon the totality of the circumstances evidenced by the submission. All incident-involved law enforcement officers and investigators were SBCSD employees at the time of their involvement.

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rest of Mr. Osuna's car windows were tinted and completely shut. Deputies Morales and Bandari were unable to see that there were four other passengers in Mr. Osuna's car, all of whom saw Mr. Osuna run the first stop sign and repeatedly begged Mr. Osuna to pull over for the police. Mr. Osuna told his passengers that he would not pull over. Mr. Osuna conveyed to his passengers that he had a gun and did not want to "do time." Mr. Osuna's passengers urged Mr. Osuna to throw the gun out the window or to hide it. Mr. Osuna refused. Two of the passengers recalled that Mr. Osuna asked them to take his gun and run away from the car with it. No passenger wanted to do so.

For approximately five minutes, Deputies Morales and Bandari were the only unit behind Mr. Osuna as Mr. Osuna led them on a dangerous high-speed pursuit through residential areas. Mr. Osuna did not stop for any stop signs or red lights, made unsafe turns, was weaving in lanes, nearly hit parked cars in his maneuvering, and reached speeds of 50 to 70 mph in 25 mph speed limit zones. Deputy Morales recalled Mr. Osuna speeding at 85 or 90 mph at one point during the pursuit.

Near the end of the pursuit, Mr. Osuna led Deputies Morales and Bandari to a cul-de-sac on the south end of Stage Coach Drive. Mr. Osuna slowed momentarily and opened his driver's door. Deputy Bandari then announced via his patrol unit loudspeaker, "Stop your vehicle, now!" and "Stop your vehicle or you will be shot." Both Deputies Morales and Bandari opened their car doors, in anticipation of Mr. Osuna fleeing out of the car on foot. Instead of stopping, however, Mr. Osuna made a sudden high-speed U-turn in the cul-de-sac. The maneuver caused Mr. Osuna to strike a curb on the driver's side of the car with such force that the driver's side airbags of the car deployed, and the front left tire became visibly damaged. One of Mr. Osuna's passengers also recalled smelling gasoline after the curb collision. Still, Mr. Osuna did not abandon his flight from deputies.

Mr. Osuna continued to lead Deputies Morales and Bandari on a slow-rolling pursuit northbound on Stage Coach Drive, where Mr. Osuna traveled at reduced speeds of 10 to 15 mph. After Mr. Osuna's car began slow rolling, all of Mr. Osuna's car doors opened and passengers were showing their hands outside of the car. Deputies Morales and Bandari realized for the first time that Mr. Osuna had passengers in his car. Deputy Bandari expected that the passengers would try to flee out of Mr. Osuna's car on foot. Before they did so, Deputies Michael Martinez, Derek Hoffman, and Corie Smith joined the northbound pursuit each in their own marked SBCSD patrol unit, all with emergency lights and sirens. Within moments of the arrival of reinforcements, four passengers in Mr. Osuna's car dove from the passenger side (one from the front and three from the rear) onto Stage Coach Drive. Deputies Martinez, Hoffman and Smith stopped their units to detain Mr. Osuna's passengers. Meanwhile, Mr. Osuna continued to roll forward.

Deputy Bandari urged Deputy Morales to move to the left to avoid the passengers in the street and to continue to pursue Mr. Osuna. As Deputy Morales tracked Mr. Osuna's driving, he noted that Mr. Osuna's speed fluctuated with intermittent braking. Deputies Bandari and Morales anticipated that Mr. Osuna would soon abandon his car and Deputy Morales attempted to get as

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close to Mr. Osuna's car as he could get. When Mr. Osuna finally stopped his car, Deputy Morales could not stop fast enough to be behind Mr. Osuna's car, however. Deputy Morales ended up driving to the left and parallel to Mr. Osuna's car, with Mr. Osuna's car just slightly ahead of the patrol unit. Mr. Osuna's driver's door was opened, as was Deputy Bandari's passenger door. Deputy Bandari removed his seatbelt and stepped out of the patrol unit and saw that Mr. Osuna was also stepping out of his car. Mr. Osuna had to duck under the deployed airbag as he stepped out of the car. As Mr. Osuna stood upright, Deputy Bandari immediately placed his left hand on Mr. Osuna's right shoulder to keep Mr. Osuna from running. Mr. Osuna and Deputy Bandari stood face-to-face, less than two feet apart. At that moment, Deputy Bandari looked down and saw that Mr. Osuna held a handgun in both of his hands and was pointing it at Deputy Bandari's torso. Deputy Bandari immediately pushed off the left hand he had on Mr. Osuna's right shoulder and stepped to the left to get out of Mr. Osuna's line of fire, drew his duty weapon and began to fire at Mr. Osuna.

After a spurt of gunfire spanning approximately two seconds, Mr. Osuna fell backwards onto the street with his head propped up on the east concrete curb of Stage Coach Drive. Mr. Osuna's pistol laid next to him. By the time that Deputy Morales was able to put his patrol unit in park, get out, and move around the trunk of the patrol unit to see where Deputy Bandari and Mr. Osuna were, gunfire had ceased, and Mr. Osuna was on the ground. Deputy Morales immediately alerted dispatch that shots had been fired. Deputy Bandari followed suit 10 seconds later and also notified dispatch that he had been shot; it was approximately 11:23 p.m.

While other deputies yelled at Mr. Osuna not to reach for his gun, Deputy Morales ran after Mr. Osuna's car. After Mr. Osuna stepped out of his car, the car continued to roll north while unoccupied. As Deputy Morales caught up to Mr. Osuna's car and activated its parking brake, Deputies Martinez and Smith moved forward and pulled Mr. Osuna away from his firearm. Deputy Morales returned thereafter and handcuffed Mr. Osuna in a prone position in the street near the rear of Deputy Morales's patrol unit.

The Victorville City Fire Department (VCFD) arrived at the scene by 11:27 p.m. to assess Mr. Osuna. A VCFD firefighter paramedic determined that Mr. Osuna was unresponsive, pulseless, and apneic, with apparent gunshot wounds. After consulting with a physician and a nurse, the VCFD firefighter paramedic pronounced Mr. Osuna's time of death at 11:34 p.m. Deputy Bandari was airlifted from the scene and transported to a local hospital, where he was treated for a gunshot wound to the left hand.

Based upon the scene investigation, the analysis performed upon the shooting weapon, and the evidence catalogued from the scene, it is estimated that Deputy Bandari fired nine times at Mr. Osuna. The weapon used by Deputy Bandari was collected and examined by a SBCSD Scientific Investigations Division (SID) criminalist, who found no damage or malfunction in the weapon. Mr. Osuna's gun was collected, but it did not appear that Mr. Osuna fired his gun during the incident.

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STATEMENTS BY LAW ENFORCEMENT OFFICERS²

Deputy Roberto Morales gave a voluntary interview to SBCSD Detectives Abernathy and Lenihan on September 29, 2020, approximately seven hours after the shooting. Detective Morales was 27 years old. At the time, Deputy Morales was completing his field training program, which began about a month prior. During the incident, Deputy Morales was wearing his department-issued tan and olive Class-A uniform, which included SBCSD insignia patches on both outer sleeves, a name plate and a SBCSD yellow metal badge. Deputy Morales recorded the incident using his belt recorder and acknowledged listening to the recording prior to giving his statement.

The following is a summary of relevant information disclosed by Deputy Morales about the subject incident:

On the evening of September 28, 2020, Deputy Morales was driving a marked SBCSD patrol unit. Deputy Bandari, who was riding in the front passenger seat, had been Deputy Morales's field training officer for the last three weeks. As the deputies traveled eastbound on Luna Road approaching Vaccaro Street, Deputy Morales had to brake suddenly to avoid colliding with a car that had turned in front of the patrol car. Deputy Morales saw the car run a stop sign before it cut the patrol car off. Deputy Morales stated that the car then proceeded eastbound in westbound lanes as it sped away. Deputy Morales activated his unit overhead lights and siren to pull the car over for the traffic violation. Deputy Morales saw that the driver's window was rolled down, so he used his unit spotlight towards the driver's side mirror and saw that the driver was a Hispanic male (Mr. Osuna). At that time, Deputy Morales thought only Mr. Osuna was in the car. As Mr. Osuna continued to flee, Deputy Morales recalled that traffic was light, but that Mr. Osuna drove recklessly. Mr. Osuna drove through residential neighborhoods at 50 to 60 mph, well in excess of the posted 25 mph speed limit. Deputy Morales estimated that Mr. Osuna also reached speed limits of 85 to 90 mph at one point in the pursuit. Deputy Morales saw that Mr. Osuna made unsafe turns, was not stopping at stop signs, and ran at least one red light.

Deputy Morales recalled that when Mr. Osuna led the pursuit into a cul-de-sac, that it appeared that Mr. Osuna was going to pull into a driveway on the left and Mr. Osuna's driver's door opened. Deputy Morales stated that he and Deputy Bandari also opened their patrol unit doors to get ready to chase if Mr. Osuna ran out of the car. It appeared to Deputy Morales that as soon as they opened their patrol doors that Mr. Osuna put his car back in "drive," made a U-turn at a "rapid rate of speed," lost control of the car, and hit sidewalk curb on the left. After hitting the curb, Mr. Osuna's car "slow rolled" on Stage Coach Drive at approximately 10 to 15 mph. Deputy Morales stated that as the car slowly rolled, the other car doors opened and passengers were sticking their hands out of the car.

²All investigative reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or Jakob Osuna by name are made here for ease of reference.

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Then, Deputy Morales saw the rear passengers dive to the pavement. One of the passengers who was dressed in red, jumped out and ran to a dirt lot. A total of four passengers got out of the car at that point. In response, Deputy Bandari told Deputy Morales to watch the driver.

While Deputy Morales continued to track Mr. Osuna slowly on Stage Coach Drive, Deputy Morales saw that Mr. Osuna had his door open. Deputy Morales stated that both his and Deputy Bandari's doors were also open in anticipation of Mr. Osuna running out of the car. As such, Deputy Morales wanted to be in as close a position to Mr. Osuna as possible. Deputy Morales further explained that ideally, he would not have wanted to position his patrol unit parallel to Mr. Osuna's car, but that after the passengers jumped out of Mr. Osuna's car, Mr. Osuna's speed appeared to be fluctuating with intermittent braking. As a result, immediately prior to stopping, Deputy Morales stated that he was not able to stop as fast as Mr. Osuna did, which caused the patrol unit to stop in a position next to Mr. Osuna's car just before Deputy Bandari stepped out of the patrol unit.

When Deputy Bandari stepped out, Deputy Morales also saw Mr. Osuna step out of his car. Deputy Morales saw Mr. Osuna and Deputy Bandari stand face-to-face, less than two feet apart. Deputy Morales then put the car in park, got out on the driver's side of the patrol unit and was moving around the trunk of the patrol unit when he heard six to eight gunshots. By the time Deputy Morales saw Deputy Bandari and Mr. Osuna again, Mr. Osuna was laying on the on the ground on his right side, less than a foot away from his gun and twitching. Deputy Morales immediately broadcasted "shots fired" by radio.

Next, Deputy Morales recalled hearing someone say, "Don't reach for the gun." Deputy Morales was then told to stop Mr. Osuna's car. Deputy Morales saw that Mr. Osuna's car had kept rolling. Deputy Morales sprinted to Mr. Osuna's rolling car, made sure no one was in it, then got in the driver's seat and put the car in park. Deputy Morales then ran back to where Mr. Osuna was, where he assisted Deputy Smith in handcuffing Mr. Osuna.

After Mr. Osuna was handcuffed, Deputy Morales went to get a trauma kit from his patrol unit and assisted in providing medical aid to Deputy Bandari.

Deputy Arootin Bandari gave a voluntary interview to SBCSD Detectives Abernathy and Max Kunzman on October 12, 2020, 14 days after the shooting of Mr. Osuna and in the presence of Deputy Bandari's attorney. Deputy Bandari was 32 years old. At the time, Deputy Bandari had been a Sheriff's Deputy for four and a half years, during which time he was involved in one other lethal force encounter.

At the time of the shooting, Deputy Bandari wore a department-issued tan long-sleeved buttoned-down shirt with SBCSD insignia on the outside of both upper sleeves. Over the right shirt pocket, Deputy Bandari displayed an American flag patch over a gold name plate indicating, "A. Bandari, City of Victorville." Deputy Bandari also wore a yellow metal star

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SBCSD badge over his left shirt pocket. Deputy Bandari wore olive green pants, a *Sam Browne* duty belt, and black boots. Deputy Bandari's service pistol was holstered on his right hip.

The following is a summary of relevant information disclosed by Deputy Bandari about the subject incident:

Deputy Bandari was on duty and assigned as a patrol Field Training Officer on the night of the shooting incident. Deputy Bandari rode in the front passenger seat of a marked SBCSD patrol unit that was being driven by Deputy Bandari's trainee—Deputy Morales, traveling eastbound on Luna Street, when Deputy Bandari saw a silver car (Mr. Osuna) fail to stop at a stop sign and nearly strike the patrol unit. Deputy Bandari recalled that Deputy Morales had to swerve to avoid getting hit. Mr. Osuna then proceeded to drive into oncoming traffic in the westbound lanes. Deputy Bandari instructed Deputy Morales to initiate a traffic stop by activating the unit overhead lights. However, Mr. Osuna did not pull over. Deputy Bandari told Deputy Morales to focus on his driving, and that Deputy Bandari would make all the radio announcements. Deputy Bandari recalled not immediately advising dispatch of Mr. Osuna's failure to yield, because he wanted to see if Mr. Osuna would pull over on his own. However, when Mr. Osuna ran a second stop sign and continued to drive erratically, Deputy Bandari alerted dispatch to the pursuit.

Deputy Bandari stated that Mr. Osuna's reckless and erratic driving posed a danger to the public. Deputy Bandari expanded that Mr. Osuna did not stop for stop signs or red lights, drove at excessive speeds through residential areas, swerved in lanes, and nearly struck parked vehicles. In addition, Deputy Bandari stated that Mr. Osuna's car was "blacked out"—it didn't have its lights on. Towards the end of the pursuit, Mr. Osuna led Deputies Bandari and Morales to a cul-de-sac of Stage Coach Drive and stopped. Deputy Bandari recalled telling Deputy Morales to prepare to conduct a felony traffic stop. However, Mr. Osuna performed a sudden and erratic U-turn maneuver and struck a curb on the driver's side. It appeared to Deputy Bandari that Mr. Osuna's driver's side front tire was damaged as a result. Thereafter, Mr. Osuna drove northbound at a very slow rate of speed described as a "slow roll" on Stage Coach Drive. By that time, Deputy Bandari noted that all four doors of Mr. Osuna's car were opened, causing Deputy Bandari to believe there were at least four occupants. It concerned Deputy Bandari that he and Deputy Morales would be outnumbered, because no other patrol units had yet arrived to assist them. Deputy Bandari recalled getting on his unit's public address speaker and stating, "Stop the vehicle" and "Stop or you will be shot." Deputy Bandari explained he did not intend to shoot at that time, he was only attempting to convey the seriousness of the situation as a "scare tactic." Shortly thereafter, Deputy Bandari saw people start to jump out of the rear passenger door of the car. As they did so, Deputy Bandari told Deputy Morales to drive to the left so that the passengers wouldn't get run over. Sometime after Mr. Osuna began his "slow roll," Deputy Bandari noticed that other patrol units had arrived. As such, Deputy Bandari told Deputy Morales to focus on the driver and the likelihood that the driver would also run.

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Deputy Bandari stated that his patrol unit was initially behind Mr. Osuna's car on Stage Coach Drive, but that Mr. Osuna stopped suddenly. Deputy Bandari recalled that his door was already open. By the time Deputy Morales stopped the patrol unit, the patrol unit was parallel to Mr. Osuna's car, with the latter slightly ahead. At that point, Deputy Bandari removed his seatbelt and stepped out of the patrol car. As he did so, Deputy Bandari saw Mr. Osuna (who's door was also open) also get out of his car. Deputy Bandari stated that the driver's airbag had deployed in Mr. Osuna's car, so Mr. Osuna had to duck under it to get out of the car. Deputy Bandari estimated that the patrol unit and Mr. Osuna's car were approximately four to six feet apart, and that he and Mr. Osuna stood approximately two feet apart, facing each other. In retrospect, Deputy Bandari recognized that their relative positioning "wasn't the safest." Deputy Bandari said that he put his left hand on Mr. Osuna's right shoulder just as Mr. Osuna stood upright because he thought Mr. Osuna might try to run. After doing so, Deputy Bandari looked down and saw that Mr. Osuna was holding a gun with both of his hands. Mr. Osuna was pointing the gun at Deputy Bandari's torso and was bringing it up towards the deputy's chest. Deputy Bandari immediately pushed away with the left hand he had on Mr. Osuna's right shoulder and side-stepped to his left to get out of Mr. Osuna's line of fire. As he stepped, Deputy Bandari simultaneously unholstered his side arm. Deputy Bandari perceived himself and Mr. Osuna to be standing "firearm-to firearm." Deputy Bandari began to fire at Mr. Osuna until he saw Mr. Osuna fall to his back onto the street. Deputy Bandari recalled firing eight times in one continuous volley in an easterly and southeasterly direction. Deputy Bandari also explained that he was so close to Mr. Osuna, that he wasn't sure if the muzzle flash he perceived during the gunfire was from Mr. Osuna's gunfire or his own. Deputy Bandari stated that he fired at Mr. Osuna because he believed that he was going to die if he didn't. Immediately after he stopped shooting, Deputy Bandari recalled feeling a sting to his left hand, saw a wound and believed he had been shot. At the time, Deputy Bandari thought that Mr. Osuna shot him.

At all times during his encounter with Mr. Osuna, Deputy Bandari did not observe that Mr. Osuna gave any indication that he was going to comply. Deputy Bandari stated that he did not consider any other force options during this incident because Mr. Osuna presented a gun too quickly. Deputy Bandari stated that less lethal means would not be effective against a subject pointing a firearm.

Based upon Deputy Bandari's interview, the examination of Deputy Bandari's duty weapon and the collection of evidence at the scene (*See Incident Scene Investigation, infra.*), it appears that Deputy Bandari fired nine rounds at Mr. Osuna during the shooting incident.

Additional Law Enforcement Personnel were interviewed and/or prepared reports regarding their involvement in the investigation of the shooting of Mr. Osuna. Three deputies witnessed Deputy Bandari shoot at Mr. Osuna—Deputies Martinez, Hoffman, and Smith. Deputy Martinez was interviewed within seven hours of the shooting incident. Deputies Hoffman and Smith were interviewed approximately 18 hours after the shooting. Deputies Martinez, Hoffman, and Smith acknowledged that they recorded the incident with their belt recorders and reviewed their audio

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recordings prior to giving their statements. However, only Deputy Hoffman's belt recording actually captured audio footage of the shooting. (*See Submitted Media, Deputy Belt Recorder Audio Recordings, infra.*)

Deputies Martinez, Hoffman and Smith joined the pursuit of Mr. Osuna behind Deputies Morales and Bandari, as Mr. Osuna slowly moved northbound on Stage Coach Drive. Deputies Martinez, Hoffman and Smith were each operating marked SBCSD patrol units with activated emergency lights and sirens and wore department-issued tan and green Class-A uniforms, with SBCSD insignia patches and badges.

Deputy Martinez was the first to arrive behind Deputies Morales and Bandari. By the time Deputy Martinez arrived, all four doors of Mr. Osuna's car were open. Deputy Martinez recalled that Mr. Osuna's car kept speeding up and slowing down, but that it appeared that the passengers were getting ready to jump out. Deputy Hoffman caught up to the pursuit but approached Mr. Osuna's car while going southbound on Stage Coach Drive, i.e., he approached Mr. Osuna's car head-on. Deputy Hoffman also saw that all four doors of Mr. Osuna's car were open. At that time, Deputy Hoffman believed he saw only four occupants in Mr. Osuna's car. Deputy Hoffman turned out of Mr. Osuna's way and let Mr. Osuna, Deputy Morales and Deputy Martinez pass before falling in line behind Deputy Martinez and proceeding northbound. By the time Deputy Smith arrived, he was the third patrol unit behind Deputy Hoffman.

Deputies Martinez, Hoffman and Smith each saw four passengers jump out of Mr. Osuna's slow-moving car and roll onto the street. Deputy Martinez was already anticipating that the passengers would try to run and focused on getting them detained. Deputy Martinez stopped his patrol unit behind Deputy Morales's patrol unit. Deputy Hoffman also stopped and immediately jumped out of his patrol unit and ordered the four passengers to the ground. Deputy Smith stated that Deputy Bandari's patrol unit was in the middle of the street, Deputy Martinez's unit was behind and to the left of Deputy Bandari's unit, and Deputy Hoffman's patrol unit was along the right (east) curb line. Deputy Smith stated that he positioned his patrol unit between Deputies Martinez and Hoffman units.

Initially, after watching the passengers jump out of Mr. Osuna's car, Deputies Martinez and Hoffman were both trying to focus on the passengers. Deputy Smith stated that as Deputies Martinez and Hoffman detained the passengers, that he instead watched Deputy Bandari. Deputy Smith saw that Mr. Osuna was facing Deputy Bandari. It appeared to Deputy Smith at that time that the patrol car's passenger door and Mr. Osuna's driver's door were touching, and that Deputy Bandari stood a foot away from Mr. Osuna. Deputy Smith stated that he was about 25 feet away from where Deputy Bandari and Mr. Osuna were.

Deputies Martinez and Hoffman had their attention drawn away from the passengers who jumped out of Mr. Osuna's car when they heard Deputy Bandari scream something indistinguishable. Then, both Deputies Martinez and Hoffman also saw Deputy Bandari facing Mr. Osuna. At that time, Deputy Martinez estimated he was 10 feet away from Mr. Osuna and Deputy Bandari. Deputy Hoffman estimated that he was approximately 40 to 50 feet away from

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Mr. Osuna and Deputy Bandari. Then, Deputy Martinez believed he saw Mr. Osuna with a black Glock-style handgun clutched in both of his hands and was pointing it at Deputy Bandari. Deputy Hoffman also recalled seeing that Mr. Osuna had an object in his hands.

Deputies Smith, Martinez and Hoffman then saw Deputy Bandari push Mr. Osuna away from him. As soon as Deputy Bandari pushed Mr. Osuna away, Deputy Smith saw that Mr. Osuna had a gun in his right hand that was pointed at Deputy Bandari's stomach or lower abdomen. Deputies Smith, Martinez and Hoffman then saw Deputy Bandari unholster his firearm and fire it at Mr. Osuna while sidestepping to the east. Deputy Smith heard four to five gunshots, Deputy Martinez thought Deputy Bandari shot seven to eight times, and Deputy Hoffman estimated that Deputy Bandari fired approximately seven to nine times.

After Deputy Bandari's gunfire ceased, Deputies Smith, Martinez and Hoffman saw that Mr. Osuna had fallen to the ground, with his head resting on the east curb of Stage Coach Drive. Deputy Hoffman's attention returned to the four detainees in front of him. Meanwhile, Deputies Smith and Martinez saw that Mr. Osuna was still moving and heard Deputy Bandari yell. Deputy Smith recalled ordering Mr. Osuna not to reach for his gun. Deputies Smith and Martinez moved forward and saw that Mr. Osuna's gun was under his right shoulder. Deputies Smith and Martinez grabbed Mr. Osuna by the arms to roll him onto his stomach and pulled Mr. Osuna away from the gun. Next, Deputy Smith pulled Mr. Osuna's hands to his back to allow Deputy Morales to handcuff Mr. Osuna.

VCFD was dispatched to the incident scene at 11:23 p.m. and arrived at the scene four minutes later. After arriving, a VCFD firefighter paramedic determined that Mr. Osuna was unresponsive, pulseless and apneic, with apparent gunshot wounds. After consulting with a physician and nurse, the VCFD firefighter paramedic pronounced Mr. Osuna's time of death at 11:34 p.m. Meanwhile, Deputy Bandari was airlifted from the scene and transported to a local hospital, where he was treated for a gunshot wound to the left hand.

Deputy Bandari's weapon was collected and found to contain one round in the chamber and four rounds in the inserted magazine. Deputy Bandari also had two additional magazines containing 13 rounds in each affixed to his duty belt. A SBCSD Scientific Investigations Division (SID) Criminalist examined Deputy Bandari's shooting weapon. The criminalist identified Deputy Bandari's weapon as a Glock model 21 Gen 4, .45 Auto caliber semi-automatic pistol and Glock ammunition magazine. After test firing it, the criminalist found that Deputy Bandari's weapon fired without malfunction.

STATEMENTS BY CIVILIAN WITNESSES³

The submission included interviews of four civilian witnesses who were in the car with Mr. Osuna during the traffic pursuit: Passenger 1, Passenger 2, Passenger 3, and Passenger 4. At the

³ Every accessible civilian statement submitted was reviewed, though all are not mentioned here.

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time of the incident Passenger 1 was 30 years old, Passenger 2 was 16 years old, Passenger 3 was 17 years old, and Passenger 4 was 14 years old. All four passengers were friends of Mr. Osuna's. Each witness was interviewed by detectives at the SBCSD Victorville Station, in the early morning hours after the shooting occurred. The following is a summary based upon the statements given by those witnesses:

As far as any of the passengers were aware, Mr. Osuna was the only person to drive his car on the evening of the incident. Mr. Osuna went to pick up Passenger 1 at about 8:00 p.m. After picking up Passenger 1 in Victorville, Mr. Osuna drove to Adelanto to pick up Passenger 2. While Mr. Osuna drove to pick up Passenger 3, Mr. Osuna pulled out his gun and displayed the gun inside the car so that Passenger 1 and Passenger 2 saw it. Passenger 1 asked Mr. Osuna to put the gun away, and Mr. Osuna did so. After picking up Passenger 3, the four of them returned to Victorville to pick up Passenger 4. All five then returned to Passenger 1's house to pick up some beers. After picking up the beers, they all left again to go hang out at another house. Passenger 1 sat in the front passenger seat. Passengers 2, 3 and 4 sat in the back seat. Passenger 2 sat behind Passenger 1, Passenger 3 sat in the middle, and Passenger 4 sat behind Mr. Osuna.

Each passenger told detectives that after leaving Passenger 1's house, Mr. Osuna failed to stop at a stop sign. Passenger 1 stated that Mr. Osuna overcorrected after missing the stop sign by driving into oncoming traffic. Passenger 4 told detectives that Mr. Osuna "cut off" a cop. Immediately thereafter, all passengers saw the flashing lights of a law enforcement vehicle behind them. Each passenger recognized that "the police" were trying to pull them over. Passenger 4 described what happened next as a "high speed chase" that went through neighborhoods. Passenger 1 recalled that Mr. Osuna drove "pretty fast," probably ran one or two stoplights, and looked like he might crash the car on a few turns he took during the pursuit.

Mr. Osuna's passengers all reported demanding that Mr. Osuna stop or pull over. Passenger 4 recalled asking Mr. Osuna to drop him off. Mr. Osuna refused all his passengers' requests. Passenger 1 told detectives that Mr. Osuna pulled his gun out from his waistband and had it on his lap. Passenger 1 stated that Mr. Osuna didn't want to pull over because Mr. Osuna didn't want to throw the gun out. Passenger 1 recalled telling Mr. Osuna, "They're gonna kill you," and "Bro, toss it." Passenger 1 also reported suggesting that Mr. Osuna hide the gun and to let the police find it. Passenger 3 told detectives that she had just met Mr. Osuna at a party she had on September 19th and at that time she saw a black gun in Mr. Osuna's waistband. At that time, Mr. Osuna told Passenger 3 that the gun was for his protection. Passenger 2 was also previously aware that Mr. Osuna carried a black gun, and Mr. Osuna also told her he carried it for protection.

Passenger 1 said he and the others told Mr. Osuna to pull over, "like a hundred times." Passenger 2 recalled Mr. Osuna telling everyone that he wasn't going to stop. Passenger 2 said she didn't hear anything from the trailing police car because all passengers were

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screaming at the top of their lungs at Mr. Osuna and over each other. Passenger 2 said that Mr. Osuna asked the rest of the passengers to run out of the car as a distraction to the pursuing officers, or to run out of the car with the gun. No passenger wanted to take Mr. Osuna's gun. Passenger 3 told detectives that Mr. Osuna did not want to stop the car because he had the gun. She heard Mr. Osuna say, "I don't want to do time."

Mr. Osuna's passengers each recalled Mr. Osuna driving into a curb and the airbags on the driver's side deploying. Passenger 3 stated that it looked like Mr. Osuna was going to drive into a tree, but that Mr. Osuna hit a curb instead. After the airbags were deployed, Passenger 2 recalled that the car smelled like gas. Passengers 3 and 4 recalled that one of the car tires "popped." All passengers recalled that after Mr. Osuna hit the curb that Mr. Osuna drove slowly. Passenger 2 said that even though Mr. Osuna drove slowly, the passengers were still fighting with Mr. Osuna to stop. Passenger 2 said Mr. Osuna ignored them and repeated he couldn't stop or wouldn't do time. Passenger 1 told the others he was going to jump out of the car and did. Passengers 2, 3 and 4 followed. Passenger 4 stated that he and Mr. Osuna both had their doors open. However, Passenger 4 decided not to jump out of the driver's side (where he sat) because he believed if the "cops" were to start firing at Mr. Osuna, that he would also get hit. As Passenger 4 moved across the back seat to jump out of the passenger side, Passenger 4 saw that Mr. Osuna was still in the driver's seat. Passenger 4 told detectives that he saw Mr. Osuna reach down under the driver's seat with his right hand and look over his left shoulder towards the officer that was off that side of the car. Passenger 4 denied seeing a gun in Mr. Osuna's hand but told detectives that he believed Mr. Osuna was reaching for a gun. All passengers stated that the car was still moving when they jumped out.

All passengers recalled being immediately ordered by multiple uniformed deputies to get to the ground after they jumped out of Mr. Osuna's car and into the street. Passenger 4 was the last to jump out and get to the ground. When Passenger 4 jumped out and got to the ground, his feet came out of his shoes. Passenger 4 heard a deputy say, "Gun" before he heard three gunshots. Passenger 4 was scared and did not look up during the gunfire. Passenger 4 believed that he felt the "puff" of gunfire where he lay on the ground. By the time Passenger 4 did look up, he saw Mr. Osuna on the ground and Mr. Osuna's car was stopped 10-20 feet away from where Mr. Osuna was.

Passenger 3 recalled lying on the ground after jumping, and five uniformed deputies started pointing their guns at them. Passenger 3 stated that she saw Mr. Osuna was on the ground, after she jumped out of the car. Passenger 3 stated that she saw an officer shoot at Mr. Osuna while Mr. Osuna was on the ground. Passenger 3 recalled hearing more than five gunshots.

Passenger 2 was looking at the deputies who were giving her orders after she jumped out of the car, when she heard two gunshots. Then, Passenger 2 recalled looking towards the gunfire and saw a deputy shoot at Mr. Osuna twice while Mr. Osuna lay on his side on the ground. Passenger 2 described the gunfire as being fast and without pause.

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Passenger 1 did not immediately see Mr. Osuna after he jumped out of the car. Passenger 1 told detectives that about 30 seconds after jumping out of the car, he heard five to six gunshots. After the gunfire, Passenger 1 saw Mr. Osuna shaking like he had been tased. Passenger 1 stated that he heard the clicking sound of a taser and saw the strings of deployed taser prongs.

After the gunfire ceased, each passenger was handcuffed at the scene. Passengers 1, 2 and 3 were detained together in a patrol unit and discussed the incident prior to giving their separate statements to detectives hours later.

SUBMITTED MEDIA⁴

Dispatch Recordings. The case agent's submission included audio recordings of SBCSD dispatch radio broadcasts pertinent to the shooting incident. The submitted dispatch radio recordings were not produced with audible timestamps. The timing of recorded events and/or broadcasts are included in the following summary based upon the dispatch log included in the submission:

Deputy Bandari radioed dispatch at 11:18 p.m., that his unit was engaged in a pursuit of a vehicle for failure to yield in the area of Dahlia Drive and Castille Street in Victorville. Deputy Bandari alerted dispatch that the suspect car was "blacked out" and traveling 60 mph. Thereafter, Deputy Bandari announced continued updates on their location. At approximately 11:20 p.m., just after Deputy Bandari announced that the pursuit reached 70 mph, the shift sergeant asked Deputy Bandari what the vehicle was wanted for. Deputy Bandari immediately responded, "He nearly struck our vehicle, sir."

At 11:22 p.m., Deputy Bandari radioed that the vehicle was moving slowly and had a damaged tire. Deputy Bandari asked if there were any units nearby. Soon thereafter, Deputy Bandari announced that they were moving northbound on Stage Coach Drive. Approximately 27 seconds later, Deputy Bandari announced that he was expecting the car occupants to flee on foot. About 13 seconds after that, Deputy Martinez announced that he was on scene and would be the secondary unit. Deputy Martinez also announced, "looks like four are about to foot bail." At 11:23 p.m., 12 seconds after Deputy Martinez's last transmission, Deputy Morales aired "R-13, shots fired, shots fired." Deputy Bandari radioed 10 seconds later, "I've been hit. Shots fired. Subject down."

Deputy Belt Recorder (BR) Audio Recordings. The case agent's submission included BR recordings collected by SBCSD peace officer personnel. The submitted BR audio recordings did

⁴ All submitted photographs and audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are mentioned here. All referenced submitted video footage was reviewed at slowed speeds.

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not include the date or timestamp of the events being recorded. However, the content of the submitted BR audio footage is consistent with the submission as a whole and supports the conclusion that two of the submitted BR recordings included audio footage of the shooting of Mr. Osuna on September 28, 2020. It appeared that the submitted BR recordings were made in real-time and were impacted by the environment that existed near to each BR device. The identity of the deputy that made each submitted BR audio recording was determined by its content and assumed based upon the digital title of the submitted recordings. Considering those parameters, the following is a summary of selected BR audio recordings:

BR Recording of Deputy Morales: Deputy Morales activated his BR device while in pursuit of Mr. Osuna, approximately four and a half minutes before shooting occurred. In total, the recording is seven minutes and eight seconds long (7:08).

At the opening of Deputy Morales's BR audio recording, Deputy Morales's patrol unit siren was instantly audible, as was the high-pitched revving of the patrol unit's engine. About three minutes before the shooting, Deputy Morales was heard commenting that Mr. Osuna was almost in a collision. About 30 seconds later, just after the shift sergeant could be heard over the patrol unit radio asking what Mr. Osuna was wanted for, the patrol unit's open-door alert rang and the unit siren blared louder than before. Moments later, the sound of a door slamming was heard, and Deputy Bandari said, "Get on him, bro. Keep up with this car."

The pursuit continued and just under two minutes before shots were fired, Deputy Bandari could be heard exclaiming, "Stop your vehicle, now!" Deputy Bandari then said firmly, "Stop your vehicle or you will be shot." Three seconds after Deputy Bandari's warning, a crash could be heard. Momentarily thereafter, the open-door alert sounded, and the patrol unit's siren blared loudly. It appeared that Deputy Morales paused the siren to broadcast, "Flat left tire." The ensuing siren noise of Deputy Morales's unit seemed to sound on and off for about 40 seconds before additional and distant siren noises from other patrol units became audible.

At 3:50, which was approximately 40 seconds prior to shots being fired, it appeared the following took place:

- 3:50 Deputy Morales could be heard saying "We got, we got open door. Open door. He's gonna foot bail."
- 3:54 Deputy Morales engaged his unit's siren continuously as Deputy Bandari was heard saying, "Get on him. Get on him. Get on him."
- 4:01 Deputy Bandari said, "Keep the light on. Keep the light on."
- 4:03 Deputy Morales responded, "Yup, light is on him."

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- 4:09 Deputy Bandari said, “Go!” followed by the slamming of a door and the high-revving of the patrol unit was heard.
- 4:14 Deputy Bandari said, “Get the driver. Get the driver.” Deputy Morales retorted, “Got driver.”
- 4:15 It sounded as if Deputy Bandari opened his door once more.
- 4:17 Deputy Bandari yelled, “Stop the car!” before the sound of his voice was drowned in siren noise.
- 4:23 Although siren noise continued loudly, Deputy Bandari could be heard to say, “Watch it. Watch the driver. [unintelligible] Watch the driver.”
- 4:27 Deputy Morales’s patrol car siren stopped and voices in the distance could be heard saying, “Get on the ground.”
- 4:29 The sound of nine gunshots in rapid and continuous sequence unfolded.
- 4:33 Deputy Morales radioed, “7-Robert-13. Shots fired. Shots fired.”

After about five seconds of undistinguishable yelling from multiple voices, Deputy Morales could be heard running. Less than 20 seconds after the gunfire stopped, it sounded like Deputy Morales shifted Mr. Osuna’s car into park, as he described to detectives during his interview. Immediately thereafter, Deputy Morales could be heard to repeat, “Code-4.” Then, it sounded as if Deputy Morales ran back towards other deputies and assisted with the handcuffing of Mr. Osuna. Deputy Morales then checked in with Deputy Bandari, went to the trunk of the patrol unit to retrieve a first aid kit, and assisted with providing Deputy Bandari aid.

BR Recording of Deputy Hoffman: Deputy Hoffman activated his BR device as he got into his patrol unit, approximately four and a half minutes before the shooting occurred. Approximately a minute after Deputy Hoffman got into his patrol unit, he activated his unit siren and appeared to be driving as indicated by the sound of the patrol unit’s revving engine. Radio broadcasts could be heard inside Deputy Hoffman’s patrol unit. About thirty seconds after Deputy Hoffman began responding to the scene, Deputy Bandari could be heard announcing that he was going eastbound on La Mesa. The radio traffic continued to be audible and included Deputy Bandari announcing that the car was wanted for nearly striking his patrol unit.

Approximately ten seconds before the sound of gunfire rang out, the sound of an open-door alert rang, followed by the sound of a door slamming. Next came the sound of Deputy Hoffman quickly shuffling. Deputy Hoffman then stated several times, “Get on the fucking ground,” before the sound of nine gunshots rang out. Then, indistinct

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screaming ensued in the distance. Multiple voices could be heard yelling, “Don’t reach for that gun.” About 20 seconds after the gunfire ended and as the screaming subsided, Deputy Hoffman could be heard saying, “Everybody keep your hands laid out in front of you. Hey, keep your fucking hands where I can see them. Hey, give me a second deputy over here. Ok, get her cuffed.” The sound of cuffing noises followed and about a minute after the gunfire, it appeared that Deputy Hoffman approached Deputy Bandari. Deputy Hoffman asked, “Hey, you hit? Where you hit?” Deputy Hoffman then proceeded to work with others in assisting Deputy Bandari.

Sound analysis of the audible gunfire in Deputy Morales and Deputy Hoffman’s BR audio recordings was submitted. Nine gunshots occurring over the course of two seconds (2.0 and 2.03 seconds) were noted in both recordings. The intervals between gunshots were noted to be fairly regular in Deputy Hoffman’s audio recording—between .22 and .25 seconds. There was more variation noted in Deputy Morales’s audio recording—between .16 and .48 seconds. Despite the difference in noted variation, the average of the time between audible gunshots in both recordings was approximately .25 seconds.

Civilian Video Recordings.⁵ Exterior home surveillance video was collected by Deputy Evans from a resident on Stage Coach Drive, three homes south of where Mr. Osuna was shot. None of the video collected by Deputy Evans was date-stamped or timestamped, but the resident confirmed that the events were captured on the evening of the shooting incident. The submitted surveillance video showed three views of Stage Coach Drive. None of the submitted civilian recordings included video of the shooting incident. However, two west-facing views (without sound) showed Mr. Osuna driving southbound at Stage Coach Drive at a high rate of speed with no headlights on, being trailed approximately three to four car-lengths back by a patrol unit with its overhead lights activated (Deputies Morales and Bandari). About two minutes later, Mr. Osuna’s car appeared again, but this time Mr. Osuna’s car was moving slowly northbound in a weaving pattern on Stage Coach Drive, still with no headlights on. Deputy Morales’s unit followed behind Mr. Osuna’s car and offset to the left, approximately one car length behind. Deputy Bandari’s passenger door was opened wide as it passed. Deputy Martinez followed behind Deputies Morales and Bandari, initially, but moved forward to the right of Deputies Morales and Bandari before moving out of the camera’s view.

A northwest-facing view (with sound) of Stage Coach Drive for the same time period showed that none of Mr. Osuna’s car doors were visibly open when it rolled northbound past that location. This view showed Deputy Hoffman’s unit reversed into a driveway. As soon as Mr. Osuna, Deputy Morales, and Deputy Martinez passed his location, Deputy Hoffman drove forward onto Stage Coach Drive and northbound behind Deputy Martinez. All three units appeared to have their overhead lights and sirens activated. While patrol unit lights were still in view and moving northbound, Deputy Smith’s patrol unit came into the camera’s view at a

⁵ The origin of the submitted civilian video recordings was determined by their content and the digital filenames attributed to the recordings as submitted.

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higher rate of speed, behind Deputy Hoffman. Seconds later, Deputy Evan's unit followed Deputy Smith. The sound of gunfire erupted six seconds after Deputy Evan's unit drove by.

INCIDENT SCENE INVESTIGATION

The incident scene investigation was managed by Detective Max Kunzman with the assistance of a SID crime scene specialist. Stage Coach Drive in the city of Victorville was a two-way (north/south) paved residential roadway flanked by concrete curbing and single-family dwellings. La Mesa Road bordered the north end of Stage Coach Drive. The south end of Stage Coach drive was the cul-de-sac where Mr. Osuna collided with a curb. The vehicle pursuit of Mr. Osuna ended on Stage Coach Drive, south of Stage Coach Lane and north of Stage Coach Circle. All recovered evidence appeared to be discovered within this area. There was no street lamppost on Stage Coach Drive, between Stage Coach Lane and Stage Coach Circle—a stretch of asphalt measuring approximately 335 feet. The distance from the south cul-de-sac of Stage Coach Drive to the location where Mr. Osuna was shot was approximately four tenths of a mile.

Mr. Osuna's car was parked in the middle of Stage Coach Drive, south of Stage Coach Lane and facing northwest. Mr. Osuna's car was described as a silver 2003 four-door Honda Accord with California license plate 5BDU900. The driver's side airbags of the Accord had deployed. The rear passenger's side door of the Accord was ajar and the moon roof was tilted open. Alcoholic beverages and a glass marijuana smoking pipe were recovered from inside Mr. Osuna's car. A glass bottle was discovered immediately outside of the driver's door. Detective Kunzman estimated that the Accord was approximately 105 feet north of Deputy Morales's patrol unit and the right rear tire of the Accord was approximately 20.5 feet west of the east curb.

Deputy Morales's patrol unit was identified parked in the middle of Stage Coach Drive and facing north. Deputy Morales's patrol unit was described as a white Ford Explorer with an emergency light bar attached to the top. The patrol unit was marked with "VICTORVILLE POLICE" across both driver and passenger sides of the patrol unit, next to a door-sized SBCSD insignia star. The distance from the right front tire of Deputy Morales's patrol unit to the east curb of Stage Coach Drive was approximately 15.5 feet. Mr. Osuna's body lay prone in the street, east of the right rear tire of Deputy Morales's patrol unit. He appeared to be dressed in a blue t-shirt, grey sweatpants, and wore black athletic type shoes. Mr. Osuna's head laid with the left ear to the ground. Mr. Osuna's gun was discovered in the concrete gutter adjacent to the east curb of Stage Coach Drive, approximately five feet away from Mr. Osuna's feet. There appeared to be blood on top of the east curb of Stage Coach Drive, approximately a foot south of where Mr. Osuna's gun was recovered.

Detective Kunzman determined the distance between Deputy Morales's patrol unit and Mr. Osuna's gun to be 16 feet and 11 inches. Detective Kunzman described Mr. Osuna's weapon as a 9mm Polymer P80 semiautomatic pistol. Detective Kunzman found there was no ammunition chambered in Mr. Osuna's gun, but that the gun's inserted magazine contained 10 live ammunition cartridges. The SID crime scene specialist examined Mr. Osuna's gun, the gun's

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magazine, and the ammunition contained within that magazine for latent fingerprints. Ultimately, no latent fingerprints were found.

Prior to Mr. Osuna's remains being transported away from the scene, the SID crime scene specialist swabbed Mr. Osuna's hands for the presence of gunshot residue (GSR). The GSR swabs were submitted for analysis. A SID criminalist identified characteristic GSR particles on the submitted swabs of Mr. Osuna's hands. The criminalist thereupon opined that presence of GSR particles may indicate that the subject (Mr. Osuna) fired a firearm, was in proximity of a discharging firearm, or had contact with a surface that had GSR on it, including handling a firearm or ammunition.

Nine fired cartridge casings (FCC) were recovered at the scene at varied distances from approximately one and a half feet to 14 feet away from Mr. Osuna, within an arc-shaped debris field to the east of Mr. Osuna's body. Each recovered FCC bore a headstamp identical to the live ammunition contained within Deputy Bandari's duty weapon: "WINCHESTER 45 AUTO." No other FCC were recovered from the scene.

Property belonging to Passenger 1 and Passenger 4 at the crime scene, including Passenger 4's shoes, were recovered in the area of the dirt easement abutting the east curb of Stage Coach Drive, approximately 30 to 50 feet south of where Mr. Osuna's gun was recovered. A fired bullet was recovered approximately five to eight feet away from where Passenger 4's shoes were found.

AUTOPSY & TOXICOLOGY

Mr. Osuna was 18 years old at the time of his death. Following an investigation by a SBCSD-Coroner Division investigator, an autopsy of Mr. Osuna's remains was conducted by a Riverside County Sheriff's Department, Coroner-Public Administrator Division forensic pathologist on October 2, 2020.

The forensic pathologist found Mr. Osuna to be an adult male, 73 inches long and weighing 170 pounds. Mr. Osuna had short black hair, a mustache and goatee. The forensic pathologist opined that Mr. Osuna sustained eight gunshot wounds (GSW): (1) head, (2) upper chest, (3) mid chest, (4) lower chest, (5) torso (right upper lateral back), (6) back, (7) right forearm (causing fracture), and (8) right forearm (soft tissues). GSW#5 to the right upper lateral back had a back to front trajectory and was also associated with a graze-type wound to the right arm. GSW#6 to the back had a "right to left" trajectory that impacted "soft tissues only." The forensic pathologist reported that the balance of the GSW's bore a front to back trajectory. Detective Abernathy noted that during the autopsy, the forensic pathologist described GSW#1, GSW#2, and GSW#4 as fatal; the other five gunshot wounds were described as non-fatal. The forensic pathologist opined that Mr. Osuna's cause of death was "multiple gunshot wounds."

Blood collected at the time of the autopsy was later found to contain measurable amounts of

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substances consistent with cold medicine and marijuana use. No illegal narcotics were noted in Mr. Osuna's blood. Mr. Osuna's blood was found to contain less than .01% blood ethyl alcohol content.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to overcome resistance. (Calif. Penal Code §835a(b).)⁶ An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, citing, *In re Tony C.* (1978) 21 Cal.3d 888, 895.) An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) A subject who draws or exhibits a firearm with the intent to resist or prevent arrest or detention of himself by a peace officer commits a serious felony. (Penal C. §417.8, 1192.7(c)) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.) If an officer is justified in shooting at a subject to confront an imminent deadly threat applied against him or others, the officer need not stop shooting until the threat has ended. (*Plumhoff v. Rickard* (2014) 572 U.S. 765, 776-777.)

PENAL CODE SECTION 196. Police officers may use *deadly* force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that "is in compliance with Section 835a." Section 835a(c)(1) specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary "defend against an imminent threat of death or serious bodily injury to the officer or another." The "[t]otality of the circumstances" means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." (Penal C. §835a(e)(3).)

A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §835a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense using objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

PENAL CODE SECTION 197. California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code §197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

⁶ All references to code sections here pertain to the California Penal Code.

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The pertinent criminal jury instruction to this section is CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction, rooted in caselaw, states that a person acts in lawful self-defense or defense of another if:

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required for a police officer to use lethal force under section 835a(c)(1), as stated *supra*.

Although these principals did not appear in section 835a until 2020,⁷ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend has “threatened infliction of serious physical harm” to the officer, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner, supra*, 471 U.S. at 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that state statutory requirements may also be satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of case law that demonstrates *how* to undertake the analysis of what a reasonable use of force under the totality of the circumstances is. (See *Reasonableness* discussion, *infra*.) As such, California’s pre-2020 case law is still relevant here.

In addition, the legislature included generalized findings and declarations at subsection (a) of section 835a that are instructive. These findings and declarations lend guidance to our analysis but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable,

⁷ Assem. Bill No. 392 (2018-2019 Reg. Sess.) was approved by the Governor on August 19, 2019. [Hereinafter “AB-392”] The statutory modifications included in AB-392 took effect on January 1, 2020.

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safe and feasible to do so;

- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;⁸
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

IMMINENCE. “Imminence is a critical component” of self-defense. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, *imminent* threat of death or great bodily injury. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows and his actual awareness of the risks posed against him are relevant in determining if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

Imminence more recently defined in the context of police use of lethal force is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

⁸ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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(Penal C. §835a(e)(2).)

In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 348.) When apprehending a violent suspect, police officers need not even choose the “most reasonable” action or the one that would likely cause the least amount of harm. (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 632.) The court in *Scott* explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment...Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.

(*Scott, supra*, 39 F.3d at 915.)

REASONABLENESS. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer’s right to use force in the course of an arrest, stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment’s “reasonableness” standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

(*Id.* at 396-397, citations omitted.)

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances under which the force was applied. A person’s right to self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.)

The *Graham* court plainly stated that digestion of the “totality of the circumstances” is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, “reasonableness” cannot be precisely defined, nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the “reasonableness”

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calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) An officer may reasonably use deadly force when he confronts an armed suspect in close proximity whose actions indicate an *intent* to attack. (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.) The threatened use of a gun is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72.) If a subject draws or exhibits a firearm to resist or prevent arrest or detention by an officer, it is not required that the subject point the firearm at the officer, or even draw the weapon in a rude, angry, or threatening manner for the subject’s conduct to qualify as a serious felony being committed against that officer. (Penal C. §§245(d), 417.8; *People v. Raviart* (2001) 93 Cal.App.4th 258, 266, *People v. Pruett* (1997) 57 Cal.App.4th 77, 88.) Even when all other *Graham* factors weigh against an officer’s use of force, a court may still find that the use of force was reasonable where the officer faced imminent harm. (*Estate of Strickland v. Nevada County* (9th Cir. 2023) 2023 WL 37372551.) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

Lastly, the use of force policies and training of an involved officer’s agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 8, *supra*.)

Another key guiding principle when undertaking this analysis is that courts do not engage in *Monday Morning Quarterbacking* and nor shall we. Our state appellate court has warned,

under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

(*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) The Supreme Court’s definition of reasonableness is, therefore, “comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present.” (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.)

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ANALYSIS

This memorandum examines the use of deadly force by Deputy Arootin Bandari on September 28, 2020. As indicated above, there are legal bases that must be met before the right to self-defense ripens and the use of lethal force is justified. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent's submission.

A use of force must be "reasonable" in order to be deemed lawful. When considered in the context of self-defense, whether the shooting deputy was justified in using lethal force involves a two-part analysis: (1) did he subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was his belief in the need to protect himself from an apparent, imminent threat of death or great bodily injury objectively reasonable.

Subjective Belief of Imminent Need to Protect. The subjective belief of Deputy Bandari is included here based upon the statements he made during his interview. (*See Deputy Bandari's statement, Law Enforcement, supra.*)

At the outset, Deputy Bandari did not immediately alert dispatch that he and Deputy Morales had initiated a traffic stop. Deputy Bandari was aware that Mr. Osuna nearly struck the patrol unit that he and Deputy Morales were in but wanted to see if Mr. Osuna would pull over. Deputy Bandari alerted dispatch of the pursuit after Deputy Bandari saw that Mr. Osuna failed to stop for a second stop sign and gave chase. Deputy Bandari recalled that Mr. Osuna did not stop for stop signs or red lights, drove at excessive speeds through residential areas, swerved in lanes, and nearly struck parked cars. Deputy Bandari also considered that Mr. Osuna may be under the influence of a substance since Mr. Osuna was not "holding a steady lane." Moreover, it was nighttime, and Mr. Osuna did not have his car headlights on. In sum, Deputy Bandari opined that Mr. Osuna drove recklessly, erratically, and in a manner that was dangerous to the public.

Once Mr. Osuna led the pursuit to the cul-de-sac of Stage Coach Drive, Deputy Bandari alerted Deputy Morales to prepare to conduct a felony traffic stop. However, before that could take place, Deputy Bandari saw Mr. Osuna make a sudden and erratic U-turn maneuver that caused the vehicle to strike the curb. It appeared to Deputy Bandari that the driver's side airbags deployed and the driver's side front tire was damaged as a result of the collision. Thereafter, Deputy Bandari saw Mr. Osuna drive in a "slow roll," northbound on Stage Coach Drive. Then, Deputy Bandari saw all four doors of Mr. Osuna's car open. This caused Deputy Bandari to believe that there were at least four people in Mr. Osuna's car, and that he and Deputy Morales would be outnumbered as no other patrol unit had yet arrived to assist in the pursuit. Deputy Bandari also recalled using his patrol unit's public address speaker system to order Mr. Osuna to stop his car, or to stop or be shot. Deputy Bandari explained that he didn't intend to shoot at that time and used these statements as a "scare tactic" or to otherwise convey how serious the situation was. It was shortly after doing so that Deputy Bandari recalled seeing people start to jump out of the rear passenger door of the car.

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By the time Mr. Osuna's passengers started jumping out of the car, Deputy Bandari recognized that other deputies had arrived to assist. As such, Deputy Bandari asked Deputy Morales to focus on the driver—Mr. Osuna. Deputy Bandari recalled that Mr. Osuna stopped his car suddenly. When Deputy Morales also stopped, Deputy Bandari saw that the patrol unit had moved next to Mr. Osuna's car, with the latter only slightly ahead. Deputy Bandari estimated that the patrol unit and Mr. Osuna's car were four to six feet apart. In retrospect, Deputy Bandari recognized that their relative positioning "wasn't the safest." Deputy Bandari's patrol unit passenger door was already open. Next, Deputy Bandari recalled unfastening his seatbelt and stepping out of the patrol unit at about the same time that Mr. Osuna stepped out of his open driver's door. Deputy Bandari recalled seeing Mr. Osuna duck under the deployed airbag of his car as he stepped out. Just as Mr. Osuna stood upright, Deputy Bandari put his left hand on Mr. Osuna's right shoulder. Deputy Bandari stated he did so because he believed that Mr. Osuna might try to run away. Next, Deputy Bandari looked down and saw that Mr. Osuna was holding a gun with both of his hands and was pointing it at Deputy Bandari's torso. Deputy Bandari and Mr. Osuna faced each other and were two feet apart. Deputy Bandari recalled immediately pushing off the left hand he had on Mr. Osuna's right shoulder and side-stepping to his left to get out of Mr. Osuna's line of fire. As he stepped, Deputy Bandari simultaneously unholstered his side arm. Deputy Bandari began to fire at Mr. Osuna until he saw Mr. Osuna fall to his back onto the street. Deputy Bandari believed that he and Mr. Osuna stood "firearm to firearm" and could not distinguish his gunfire from Mr. Osuna's. Deputy Bandari told detectives that he fired at Mr. Osuna because he believed that he was going to die if he didn't.

In sum, at the time Deputy Bandari fired his weapon Deputy Bandari believed that Mr. Osuna was about to shoot him. The stated account of Deputy Bandari of the circumstances at play *prior* to and culminating with his use of lethal force is consistent with the submission as a whole. Furthermore, the submission supports the Deputy Bandari's conclusion that Mr. Osuna was armed with a firearm and intended to shoot and injure or kill him. Based upon the foregoing, it is reasonable to conclude that Deputy Bandari bore an honest and subjective belief that he was under threat of imminent deadly harm or bodily injury at the time he used lethal force.

Reasonable Belief of Imminent Need to Protect. The use of lethal force is authorized by Penal Code section 835a(c)(1) when an officer has a "reasonable" belief of an imminent threat of death to a person. A definition of "reasonable" is not included within section 835a. Instead, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a self-defense claim: a finding that the involved shooting officer had an objectively reasonable belief of the need to use deadly force to protect himself from imminent threat of death or serious injury.

As in *Graham*, we first consider the severity of the crime at issue. Mr. Osuna's initial violation of traffic rules included infractions (failing to stop at a stop sign, driving without headlights on at night, speeding) and misdemeanors (driving the wrong way and flight from pursuit of a peace officer). Mr. Osuna's conduct became potentially felonious after he committed three or more traffic offenses constituting reckless driving while intentionally evading a peace officer, in

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violation of Vehicle Code section 2800.2. Evading while driving in the direction opposite lawful traffic is also a potential felony pursuant to Vehicle Code section 2800.4. The submission in total makes evident that Mr. Osuna knew that he was being pursued by law enforcement. Deputy Morales drove a distinctively marked SBCSD patrol unit and activated the unit overhead emergency lights and siren for the duration of the pursuit. Both Deputies Morales and Bandari were wearing SBCSD uniforms, including visible yellow metal star badges and SBCSD insignia patches. The passengers of Mr. Osuna's vehicle immediately recognized that deputies were attempting to pull them over. During the pursuit, the passengers recalled Mr. Osuna refused to pull over despite their repeated pleas, because Mr. Osuna, "didn't want to do time." As such, it is reasonable to conclude that Mr. Osuna recognized he was being pursued by law enforcement and fled specifically to avoid apprehension by them.

Although Mr. Osuna's driving posed a danger to those in his car, other motorists, and the community the pursuit took place in, this was not the most serious crime that Mr. Osuna committed. Ultimately, the most serious crime at issue was committed immediately prior to Deputy Bandari's use of lethal force. Mr. Osuna's passengers became aware that Mr. Osuna had a gun and that Mr. Osuna refused to discard or stow it during the pursuit. The last person to jump out of Mr. Osuna's car—Passenger 4, recalled seeing Mr. Osuna appear to reach for what he believed to be gun and turning towards the pursuing officers, right before Passenger 4 leapt to the street. Deputies Martinez and Hoffman heard Deputy Bandari scream something, though they were unable to distinguish what. While on the ground, Passenger 4 also recalled hearing someone yell "gun" before shots were fired.

Deputy Bandari was within two feet of Mr. Osuna when he saw Mr. Osuna pointing a gun at his torso. But even from further back, Deputies Smith, Martinez, and Hoffman each recalled seeing Mr. Osuna with a firearm pointed at Deputy Bandari immediately before shots were fired. Moreover, the discovery of Mr. Osuna's weapon within a foot or two of where he initially fell back is consistent with the conclusion that Mr. Osuna possessed the gun at the time he fell. Drawing or exhibiting a firearm with the intent to prevent detention by a peace officer is a violation of Penal Code section 417.8, a "serious" strike felony pursuant to Penal Code section 1192.7(c). Raising a loaded firearm at an officer engaged in in the performance of his duties is a violation of Penal Code section 245(d)(1)—a "serious" felony, that could also be the basis of a limited class of "violent" felonies pursuant to Penal Code section 667.5(c)(8). Furthermore, neither section 245(d)(1), nor 417.8 required that Mr. Osuna fire a gun at any law enforcement officer, or even point a gun directly at Deputy Bandari. It was enough that Mr. Osuna armed himself with an operable and loaded firearm and wielded it such that Mr. Osuna *could have* immediately used it against Deputy Bandari or any of the other nearby deputies. As such, the severity of the crimes Mr. Osuna may have committed or was engaged in immediately prior to Deputy Bandari's use of force weighs in favor of a finding that Deputy Bandari's use of force was reasonable.

Resistance is another essential consideration in a *Graham* analysis. Deputies were authorized to use reasonable force to effectuate Mr. Osuna's detention as soon as they had a reasonable suspicion that Mr. Osuna committed a crime or traffic violation. As already discussed, Deputies

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Morales and Bandari witnessed Mr. Osuna commit numerous traffic violations. Mr. Osuna's reckless pre-contact flight from deputies indicated a level of resistance that placed himself and his passengers, other motorists, and the community in danger. Despite the urgings of his passengers, Mr. Osuna refused to yield to the pursuing deputies or to stop to let his passengers out. Even after Mr. Osuna's vehicle became somewhat disabled, Mr. Osuna did not stop to let his passengers out. Deputy Bandari advised Mr. Osuna via loudspeaker that he risked getting shot if he did not stop. Passenger 1 also told detectives that he told Mr. Osuna to get rid of his gun or that he would get killed. Mr. Osuna was not swayed to get rid of his gun or surrender, even under threat of death. It appeared that the passengers jumped out of Mr. Osuna's moving car out of fear for their own safety. Thereafter, despite the arrival of additional patrol units also utilizing their emergency lights and sirens, Mr. Osuna's did not indicate any wish to comply or surrender. Instead, Mr. Osuna chose to remain armed with his pistol as he prepared to encounter Deputy Bandari. Self-armament with a semi-automatic firearm in the face of detainment by uniformed and armed peace officers is an extreme level of resistance. Mr. Osuna had a duty to refrain from using any force or weapon to resist detention or arrest. As such, the submission in total supports the finding that while Mr. Osuna demonstrated a sustained level of resistance for the duration of the traffic pursuit, he engaged in active and extreme resistance at the time lethal force was used against him. In the calculus of what was "reasonable" under *Graham*, Mr. Osuna's extreme resistance weighs in favor of a finding that Deputy Bandari's use of force was reasonable.

Immediacy is the "most important" *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. The circumstances under which Deputy Bandari came face-to-face with Mr. Osuna was unplanned. Deputy Bandari recognized that the close positioning of the patrol unit and Mr. Osuna's vehicle was not the safest. However, Deputy Bandari explained that this position was dictated by Mr. Osuna's unpredictable movements. After Mr. Osuna struck the curb on Stage Coach Drive, Deputy Morales followed behind Mr. Osuna's slow-rolling car. When the passengers started to jump out, Deputy Bandari recalled telling Deputy Morales to drive to the left to avoid the passengers who jumped out of the right side of Mr. Osuna's car. Deputy Morales also explained that after the passengers jumped out and Mr. Osuna's slow rolling continued, that Mr. Osuna's speed fluctuated with intermittent braking. With Deputies Morales and Bandari's patrol unit doors open and the arrival of other units, it would reasonably appear that the sound of multiple sirens might impact Deputy Morales's ability to perceive and react to the movement of Mr. Osuna's car. In any event, by the time that Deputy Morales stopped, the patrol unit was in a position parallel to Mr. Osuna's car, such that Mr. Osuna's opened door almost appeared to touch Deputy Bandari's opened door. Meanwhile, Deputy Bandari had been anticipating that Mr. Osuna would try to evade on foot. Up until that point, Deputy Bandari had been given no reason to believe that Mr. Osuna was armed. Thus, as soon as Deputy Bandari stepped out of the patrol unit, he placed his left hand on Mr. Osuna's right shoulder to keep Mr. Osuna from running away. Deputy Bandari explained that in his training and experience, that when the subject of a pursuit is armed, they usually throw it out of the vehicle during the pursuit or leave the weapon in the car. Indeed, these were the exact actions that Mr. Osuna's passengers begged Mr. Osuna to take and which Mr. Osuna flatly refused.

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Mr. Osuna had many opportunities during his flight to discard or disassociate himself from his firearm, including in the moments immediately before he stepped out of his car to face Deputy Bandari. Yet, during the flight and later as he stepped out of his car, Mr. Osuna instead chose to keep his firearm on his person. Passengers 2 and 3 did mention to detectives that Mr. Osuna asked them to run out with his gun. While Mr. Osuna may have entertained the idea of distancing himself from his gun, it was only at the peril of others or perhaps because he might retrieve the gun from them, thereafter. Passengers 2 and 3 told detectives that they were previously aware that Mr. Osuna carried a black handgun. At that prior time, Mr. Osuna told both of them it was for his protection. It would be reasonable to conclude, therefore, that Mr. Osuna was not only aware of his firearm's capability and contents, but also that he intended to use it against others. The lethal quality of the live rounds loaded into Mr. Osuna's gun was not diminished by the fact that no round was discovered in the chamber. Mr. Osuna was still capable of shooting and killing anyone in the presence of his gun as he wielded it. Hence, when Deputy Bandari looked down and saw that Mr. Osuna already had a gun in his hands that was pointed at Deputy Bandari's torso, Deputy Bandari faced a lethal threat within a compact space requiring imminent action to avoid death.

In this instance, Deputy Bandari pushed away from Mr. Osuna to get out of Mr. Osuna's line of fire, drew his duty weapon and fired until Mr. Osuna dropped his weapon and fell to the ground. It appears that the injury to Deputy Bandari's left hand is consistent with the deputy's recollection of having his left hand in front of him (on Mr. Osuna's shoulder) immediately prior to firing. All gunfire took place within a very short timeframe of about two seconds. During that timeframe, Deputy Bandari reported stepping to his left (Mr. Osuna's right). This would be an explanation as to why Mr. Osuna was found to have sustained a GSW with a back-to-front trajectory associated with an entrance wound on the right upper lateral (side) back and an exit wound to the right mid lateral chest, as well as a second GSW to the back with a right-to-left trajectory. The front-to-back trajectory identified in the remaining six of the total eight GSW's that Mr. Osuna sustained is also consistent with what Deputy Bandari and the witnessing deputies reported—that Deputy Bandari and Mr. Osuna were facing each other immediately before shots were fired. The gunshot analysis of BR audio recordings revealed an average of .25 seconds between rounds of audible gunfire over the course of two seconds. Thus, the front-to-back trajectory of 75% of Mr. Osuna's GSW's suggests that Deputy Bandari faced Mr. Osuna for a majority of the two seconds during which he fired.

In sum, at the point where Deputy Bandari realized Mr. Osuna was pointing a handgun at him at a distance of approximately two feet, Deputy Bandari was faced with a tense, uncertain and rapidly evolving situation during which he could be instantly killed by Mr. Osuna. Mr. Osuna's conduct demonstrated that he had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to Deputy Bandari. Deputy Bandari reasonably believed that lethal force was instantly required to avoid his immediate death. Deputy Bandari was not required to wait until Mr. Osuna fired his gun first or wait until he was struck by Mr. Osuna's gunfire. As the law is comparatively generous to law enforcement in cases where potential danger or other exigent circumstances are present, the submission in total provides no

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compelling basis to second guess Deputy Bandari's choice to use force upon Mr. Osuna.

Hindsight. In the evaluation of the question of necessity at the time shots were fired, it must be noted that the courts have employed a standard that is highly deferential and viewed from the vantage point of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. This standard allows for the fact that split-second judgments are being made under tense, uncertain and rapidly evolving circumstances. Here, Deputy Bandari believed at the time of the lethal force encounter that Mr. Osuna may have fired at him. However, no FCC consistent with Mr. Osuna's weapon was discovered at the scene, nor was any live round chambered within Mr. Osuna's weapon. As such, it is reasonable to conclude that Mr. Osuna did not actually fire his weapon at Deputy Bandari. This conclusion is precisely the kind of hindsight that cannot negate the reasonableness of Deputy Bandari's use of lethal force. Mr. Osuna already had his gun in his hand and pointed at Deputy Bandari by the time Deputy Bandari perceived he was in imminent danger of being shot. Deputy Bandari had no apparent reason to suspect that Mr. Osuna was not immediately prepared to fire. Deputy Bandari had no time or physical space to delay in his effort to save his own life. Similarly, that Mr. Osuna was out-manned, out-gunned, and facing trained law enforcement also cannot change the analysis. These facts do not diminish the imminent danger perceived by Deputy Bandari: Deputy Bandari already had a gun pointed at him at close range even before Deputy Bandari had his own gun drawn. Deputy Bandari had a legal right to fire his duty weapon as quickly as he could manage to avoid being imminently shot and killed by Mr. Osuna.

Based on the foregoing discussion, each of the primary *Graham* factors as applied support a finding that the use of lethal force by Deputy Bandari was reasonable. The "totality of the circumstances" discussed herein further support a finding that Deputy Bandari reasonably believed he was defending against an imminent threat of death or serious bodily injury to himself at the time he used lethal force. As such, the use of lethal force by Deputy Bandari was also justifiable under Penal Code sections 196 and 197.

De-escalation. Section 835a(a) does advise that lethal force be used only "when necessary to defend human life" and that safe and feasible de-escalation should be employed. Normally, the mere presence of multiple law enforcement vehicles, multiple uniformed law enforcement officers and the issuance of verbal commands can serve as a de-escalation technique. One faced with such a law enforcement response might reasonably find there is no likely escape and choose to surrender. The presence of law enforcement was clearly communicated to Mr. Osuna and the passengers of his car. The passengers knew enough to show their empty hands outside of Mr. Osuna's car before jumping out of it. The submission as a whole supports a reasonable conclusion that Mr. Osuna *knew* that armed and uniformed officers were approaching to detain him. Yet, as discussed above, Mr. Osuna did not comply or make any appreciable indication of a desire to peaceably surrender himself. The presentation of a loaded firearm and pointing it at a uniformed officer who just stepped out of a marked patrol unit after a high-speed pursuit negated any reasonable conclusion that Mr. Osuna was now compliant and surrendering. For his part, Deputy Bandari explained less-lethal options would be ineffective against the lethal weapon that Mr. Osuna presented. Passenger 1 believed that a taser was deployed at the scene. However,

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nothing else in the submission showed that occurred. In any event, it is unreasonable to expect Deputy Bandari to risk imminent death for the mere possibility that less lethal tools *might* have stopped Mr. Osuna from shooting him. The presence of less than lethal tools would not have changed the lethal and immediate character of the threat that Mr. Osuna met Deputy Bandari with, as discussed *supra*. In sum, Mr. Osuna's actions dictated a circumstance where there was no further feasible, safe or reasonable opportunity for Deputy Bandari to de-escalate.

Other Statutory Considerations. The additional considerations included in §835a(a) also support a conclusion that the use of deadly force by Deputy Bandari was lawful.⁹ First, the submission in total supports a conclusion that Deputy Bandari did not act excessively. Deputy Bandari fired at Mr. Osuna only after he saw that Mr. Osuna had a handgun pointed at the deputy's torso. Upon perceiving the grave danger he was in, Deputy Bandari pushed away from Mr. Osuna's line of fire and fired his own handgun in a continuous volley of nine rounds over the course of approximately two seconds. Deputies Martinez, Hoffman and Smith each recalled seeing Mr. Osuna come face-to-face with Deputy Bandari and raise what they believed to be a firearm at Deputy Bandari. Deputy Bandari recalled that Mr. Osuna appeared to be falling as he fired his last two rounds. Passengers 2 and 3 told detectives that Mr. Osuna was shot while on the ground. Passenger 2 stated that she heard four gunshots but only saw two. Passenger 3 stated she heard more than five gunshots, all of which took place after Mr. Osuna was on the ground. Passengers 2 and 3 also admitted, however, that they did not see Mr. Osuna get out of his car and expressed confusion about how Mr. Osuna got from the driver's position to the east curb of Stage Coach Drive. The submission in total does indicate that after Passengers 2 and 3 leapt out of Mr. Osuna's moving car that deputies were actively attempting to detain Passengers 2 and 3. Moreover, before shots were fired, Passengers 2 and 3 were likely on the ground between 30 to 50 feet away from where Deputy Bandari and Mr. Osuna stood, in a stretch of Stage Coach Drive without overhead street lighting. Deputy Bandari's gunfire occurred within two seconds, in a dynamic environment of multiple moving patrol units with emergency lights activated and multiple uniformed deputies assisting to apprehend civilians who had just jumped out of a moving car. Passenger 4 was also on the ground in between where Mr. Osuna fell and where Passengers 2 and 3 were on the ground. Under these circumstances, Passengers 2 and 3 were not in the best position to see what had unfolded between Deputy Bandari and Mr. Osuna.

Mr. Osuna's weapon was recovered in the location where Mr. Osuna originally fell. This would tend to show that Mr. Osuna remained in possession of his firearm until he fell. Moreover, it was lawful for Deputy Bandari to shoot until the perceived lethal threat had ceased. Deputy Bandari fired at Mr. Osuna in a two-second volley of continuous gunfire with no audible extended pauses. This would tend to indicate that Deputy Bandari was firing to respond to a singular perceived threat. Indeed, Deputy Bandari's duty weapon contained five more live rounds and possessed two additional magazines with 13 rounds included in each on his duty belt. Had the threat on his life continued, Deputy Bandari instantly possessed firepower to continue shooting.

⁹ This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any use of force policy was violated.

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The submission shows that Deputy Bandari appreciated that there was no need to engage in a second volley because Deputy Bandari perceived that Mr. Osuna was on the ground and disarmed. The submitted evidence supports the conclusion that lethal force did not continue after the lethal threat ceased—Deputy Bandari perceived Mr. Osuna fell to the ground and no longer held his gun in hand. As such, Deputy Bandari can be found to have well-appreciated the gravity and consequence of his use of lethal force, evidenced by the judicious way he employed lethal force in this instance.

CONCLUSION

Under the facts, circumstances and applicable law in this matter, the use of deadly force by Deputy Arootin Bandari was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability attaches in this incident based on each law enforcement officer's conduct.

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
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Dated: December 18, 2023

